

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for November 19, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Wednesday, November 19, 2014

Time: 10:00 am – 3:30pm

Location: Ramsey County Public Works, Arden Hills, MN 55112

Chair: John Sherman, VRS Extended Employment Program Director

Facilitator: Holly Johnson, Lanterna Consulting, Inc. contracted through Management Analysis & Development, Minnesota Management and Budget

Advisory members (or alternates) in attendance: *Kim Babine, Laura Bealey, Gil Bessard, Tim Dickie, Jeremy Gurney, Tim Hammond, Nancy Huizenga, Holly Johnson, Anita Kavitz, Wendy Keller, Don Lavin, Clayton Liend, Kim Peck, Dean Ritzman, John Sherman, and David Sherwood-Gabrielson*

Guests: *Chelsea Georgesen*

Welcome and Overview of Agenda

The meeting was called to order. The facilitator provided a brief overview of the meeting objectives and agenda. The advisory was asked to provide any edits for the October 29th session notes by October 31, 2014 after which time the notes would be finalized.

Updates since last Advisory Working Session

John Sherman provided updates on EE Rule Revision work since the last advisory meeting on October 29, 2014.

VRS Director Kim Peck provided a brief overview of a presentation she gave at the November 11, 2014 meeting of the Council of State Administrators of Vocational Rehabilitation (CSAVR) entitled "Title IV – Section 458 (aka 511) Limitations on Use of Subminimum Wage". The presentation provided an introduction to an area of policy changes contained within the Workforce Innovation and Opportunity Act (WIOA) passed by Congress on July 22, 2014. The new legislation places significant restrictions on local or state educational agencies' ability to contract with entities holding a subminimum wage certificate. The legislation is set to become effective July 22, 2016.

Key Perspectives for EE Rule Revision Work

Advisory members are asked to keep a system wide view for the EE Rule Revision topic discussions. The five key perspectives are summarized as:

1. **Advocacy Organizations**
2. **Public Partners**
 - Local level - counties, municipalities, etc. e.g. Ramsey County
 - State level - agencies, etc. e.g. Department of Human Services (DHS), Minnesota Olmstead Plan
 - Federal level
3. **Extended Employment (EE) Providers**

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4. EE Workers

- Currently working
- Eligible but not currently working

5. VRS - EE Rule 'Owner' and Accountable Agency

- VRS EE team: John Sherman, Anita Kavitz and Wendy Keller
- Other DEED and VRS staff

Advisory Working Session on EE Rule Discussion Topics

Continued work on GROUP TWO Topics:

- 4. Federal Implications for Olmstead**
- 5. Capping Non-Competitive Employment**
- 6. Eligibility of Workers**

Review of updated draft Informed Choice Process and proposed draft definitions related to the Department of Justice (DOJ) on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.

VRS Senior Rehabilitation Consultant Anita Kavitz reviewed the revised draft Informed Choice Process document which was updated on November 5, 2014 to incorporate advisory input from the October 29, 2014 advisory meeting.

Following the DOJ technical assistance guide review, Anita once again referenced the draft Informed Choice process developed with input and support from the Advisory Committee. The draft Informed Choice process consists of the following 13 steps:

1. Start with reasonable, objective assessment
2. Identify the individual's needs
3. Consider whether individuals with similar needs are working and receiving services in integrated employment settings with appropriate supports
4. Identify the supports and services necessary for the individual to succeed in an integrated employment setting
5. Provide the individual with information about the benefits of employment in integrated settings
6. Facilitate visits and other experiences in integrated employment settings
7. Offer the individual opportunities to meet with other individuals with disabilities who are working and receiving services in integrated employment settings
8. Offer the individual's family, if appropriate, opportunities to meet with families of other individuals with disabilities who are working and receiving services in integrated employment settings

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9. Offer the individual opportunities to meet with service providers who are supporting individuals with disabilities in integrated settings
10. Identify objections and concerns expressed by the individual, and family members if applicable
11. Identify remedies to address the individual's and family members' objections and concerns
12. Ask the individual if they're opposed to working in an integrated setting. If not opposed, begin job development for competitive job placement.
13. If the individual is opposed, repeat process annually.

John Sherman asked the advisory to keep in mind that the process of informed choice is essential to both those new to employment as well as those who are already in employment. Informed Choice includes an ongoing check-in process to ensure the individual is aware of, and provided, employment choices in the most integrated setting possible.

Advisory member Don Lavin recommended that language be added to step 2 in the Informed Choice process to identify the jobseekers interests and strengths in addition to their needs. The recommendation was supported by the advisory.

Next, Anita reviewed a set of draft definitions related to key concepts referenced by the DOJ including 'informed choice', 'integrated setting', 'segregated setting', 'enclave work site', 'special minimum wage', 'non-competitive employment', 'competitive employment' and 'supported employment'. Both reviewed documents were sent with the agenda as session preparation materials.

Presentation of draft Extended Employment Program Structural Changes

VRS Senior Rehabilitation Consultant Anita Kavitz walked the committee through a draft EE Program Structure designed to implement the integration mandate of Title II of the ADA and Olmstead v. L.C. and to address issues related to the effective management of the EE Program by the accountable agency Minnesota's Department of Employment and Economic Development (DEED). The presentation included a comparison of the current program structure (slide #20) and the significant issues with the current structure summarized as follows:

- The current structure is inadequate for assessing compliance with the Integration Mandate of ADA/Olmstead v. L.C. (slide #22)
- It is insufficient for establishing and monitoring movement of workers from segregated to integrated settings (slide #23)
- Special interest groups' Legislative work-arounds resulted in definitions, service models, and rate exceptions inconsistent with EE Rules and uneven playing field for CRPs. (slide #24)

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- Statutory CBE definition prohibits CRPs from promoting EE workers to competitive staff positions with support and earning SE reimbursement
- Funding is limited, and there is no priority to serve workers in competitive employment (with supports) over other service models (CE, CBE, ABE)
- The EE system is no longer an effective change agent. (slide #25)

Next the presenter discussed the importance of shifting the paradigm to refine Minnesota's EE Program based on the Integration Mandates established by ADA, Olmstead v. L.C., and the Workforce Innovation and Opportunity Act (WIOA). In an effort to design a structure to meet these mandates, the advisory committee was provided a draft, simplified EE Program structure for review and comment.

The simplified structure continues to support the full continuum of competitive and non-competitive work via two funds: one for competitive work and services and the other for sheltered work and services. The simplified structure concept was summarized on slide #28.

Advisory EE providers asked that the words 'sheltered work' not be used given its dated, and potentially negative, connotations for the Rule revision. Anita Kavitz recognized the issue during development but used the term based on Jeff Bangsberg's request at the last meeting that all MN departments strive to use common language, and 'sheltered work' aligns with the language in the DOJ statement. John Sherman noted the provider's concerns and agreed to consider alternative language.

Important Considerations for Revision offered by the advisory as related to:

- **Perspectives on the items reviewed in the morning: the Integration Mandate and the draft Informed Choice Process, draft definitions and draft EE Program Structural Changes:**

1. Advocacy Organizations

- Integration is a major issue that impacts the lives of individuals with disabilities in many ways. While DEED leads the integration effort as it relates to employment issues, the resources must be contemplated in combination with other accountable agencies such as Department of Education and the Department of Human Services. There must be interagency policy and implementation to address the mandates.
- The drafts reviewed today provide a path for getting there.
- Let's not lament and scare ourselves about the changes. At ARC we've been waiting for these types of changes for 60 years. Success is intentional, let's move forward and we'll figure out how to make this successful for people with disabilities in our country.

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2. Public Partners

- This looks like a vision for the future. While resources are definitely a concern, the mandates and legislation provide a great opportunity to accelerate movement for people with disabilities. We need to help build an employment system that works better for people with disabilities and helps to level the playing field. I'm going to take this back to the county for not only compliance with Olmstead but to talk about creating a more incentive based system. I really like the course we're on.
- I also really like the draft concepts we've been shown. I think we need to look at situations such as enclaves coming out to small groups as well as situations where individuals are self-employed and incomes may be very low while they are getting established. 'Micro-enterprise' opportunities will likely have implications for competitive/non-competitive wages.

3. Extended Employment (EE) Providers

- We are trying to process and adjust to all the changes and it is challenging. We strongly believe in not limiting choice for our consumers. We believe that the individual knows what's best for them. It's also important to note that EE providers are part of the solution here and not the problem.
- As someone who has been in the field since the 1970's, the conversation this morning has been enlightening. It's helpful to really dig into the mandates.
- Overall I think what we've been talking about here is very positive - it's about creating choice and competitive employment. I do have some questions though... how will constituents be supported in moving from non-competitive to competitive employment? how does the transition to this direction happen? I would rather see more plain language than some of the DOJ language such as 'does not oppose' however I understand the need to follow legislation. We will need to be mindful of how we use language that makes sense to the people we work with and minimize the legalese and confusion for the materials they see and experience.
- Moving the funding may not necessarily move the people. We may be overproducing. What if we just end up funding other people?
- The amount and level of changes proposed are overwhelming. It is not just one thing that EE Providers are trying to understand and adapt to, it's 245D, Olmstead, HCBS settings rule, DWRS, etc.
- It's a lot to handle but this has been good discussion and it's worth having. Given the possibility of wording changes is helpful. I'm anticipating asking for input from other providers on this.

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- This morning's presentation has been very helpful for me to gain a better understanding of what EE is designed to fund. It's been good to think about the bigger system and to think beyond our own organizations. It's about what needs to happen over the next 10 years. The draft is a progressive model that reflects Olmstead's mandate.
- 4. **VRS - EE Rule 'Owner' and Accountable Agency**
 - I have greatly appreciated Anita's depth of analysis of the Department of Justice's requirements in developing draft materials for advisory input.
 - As always, the devil will be in the details. Between HCBS and WIOA, our universe is changing dramatically. And VRS can either build a rule change for the short term or we can do our best to build something that gets us into the future.
 - We must be responsive to the mandates in order to reduce the risks of non-compliance. In some places of the current Rule, we must make changes. Beyond making incremental changes, given the life span of the current Rule and the time a revision requires, our hope is to develop the new Rule in a way that helps move the system forward for the next decade.

Important Considerations for Revision offered by the advisory as related to:

▪ Eligibility of Workers Topic

Next, Anita Kavitz referred the advisory to the following two handouts distributed at the end of the October 29th meeting:

1. *'EE Eligibility Index of Recommended Changes - 10/28/2014'*
2. *'Appendix 2: Understanding the relationship between the Federal Medical Assistance Waiver Program and Minnesota's Extended Employment Program'*

She provided a brief refresher on the documents and asked if there were additional questions or input regarding the recommended changes pertaining to this EE Rule topic. The advisory discussed eligibility in connection with the waivers program. The question was raised regarding how many of those being served in EE are on waivers and the answer was unknown. Kim Peck asked the advisory what populations the EE program services that other programs do not in order to understand what groups would be most at risk without access to EE services.

The county representative stated that people can be 'waiver eligible' and not be receiving waiver due to county waiver constraints. He asked the advisory what might be the opportunity to help support those shifting from non-competitive to competitive employment as well as the connection of waivers based on level of need. David Sherwood-Gabrielson noted that the waiver waiting list poses an issue for Olmstead.

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An advocacy representative encouraged VRS to preserve EE for those who need it most e.g. Supported Employment for people who would not be eligible for other funding. Kim noted that making our priorities more explicit to serve these needs can help make the case with the legislature about the need to have targeted funds for those who doesn't have access to other funding. Identification of specific populations and the importance of investment in employment services and support for those populations may help support future EE program sustainability and growth.

John talked about the need for data on waivers today and the importance of the connection to DHS, state and county funding levels. Typically when waiver dollars are depleted, employment services are frequently discontinued. The DHS representative clarified that in general waiver dollars can be used to support employment services as long as there is no double dipping across programs.

Presentation of Extended Employment in Metro and Greater Minnesota

John Sherman presented an overview of information on the differences in the number of workers, wages earned, hours worked and settings that occur in aggregate between the Metro (defined as the seven county Standard Metropolitan Statistical Area (SMSA)) and Greater Minnesota.

The EE program supports many more persons in greater Minnesota and there are more hours reported per person. While more wages are earned in Greater Minnesota, the average wage and wages earned per person are greater in the Metro area. The employment mix is much more skewed toward supported employment in the metro.

After compilation of the information, John shared his preliminary conclusion that Minnesota effectively has two 'worlds' when it comes to Extended Employment:

1. In the metro, there is much more emphasis on supported employment and more limited center and community based employment.
 - higher average wages, greater earnings, fewer hours
2. In greater Minnesota, there is greater use of center and community based employment.
 - more hours, less earnings, lower average wages

After sharing the information, John asked the advisory for their thoughts on the differences between the 'two states' that have emerged. Members shared a number of reactions and ideas as to the factors creating the differences such as the variation in the number of employers and the number of EE providers.

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Factors for Greater Minnesota mentioned:

- **Transportation** is a huge issue for Greater Minnesota. In one case shared, jobs must either be the standard Monday to Friday and 8am to 5pm so that the limited public transportation can be used or the EE provider has to somehow provide it in order to secure employment. One provider is putting \$1 million into transportation costs for their Greater Minnesota organization.
- While **manufacturing** is making a comeback in some places as the economy has rebounded, the nature of manufacturing is changing. It is becoming much more complex and technical. Employers like Arctic Cat and Polaris are moving work sites to population concentrations in order to get access to sufficient skilled workers. The town of Roseau is even putting up people in hotels in order to get workers.
- **Economic conditions can vary widely** outside the Metro area. Locations such as Mankato and Rochester are experiencing huge booms. The competition for VR workers is making it increasingly difficult for providers to attract and retain VR staff when compared to larger, higher paying employers who often have less stressful/less responsibilities for higher wages than what EE providers are able to offer. This increases the pressures on EE provider service quality and financial sustainability.

Recap of Working Session

As it relates to the Informed Choice Process, the advisory recommends the following:

1. Language be added to step 2 in the Informed Choice process to identify the jobseekers interests and strengths in addition to their needs.

The advisory reviewed and provided input on the latest draft of the Informed Choice process, the draft definitions, a draft EE program structure, the draft EE eligibility index recommended changes and information pertaining to both metro and greater Minnesota EE program demographics.

John Sherman noted the potential future need for small groups to delve into specific technical aspects of the Rule revision and implications.

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Next Steps & Wrap Up

1. The committee requested copies of the session's presentations entitled "***DRAFT EE Program Structural Changes***" and "***Extended Employment: Metro - Greater Minnesota***". VRS EE staff will email to the advisory committee along with the session notes.
2. The advisory agreed to gather input from other EE system members notably, EE providers mentioned sharing the information presented at an upcoming Minnesota Organization for Habilitation and Rehabilitation (MOHR) meeting.
3. The advisory committee approved cancellation of the scheduled December 10th meeting in favor of a longer meeting on December 17th. The December 17th meeting will be hosted at Proact, 3195 Neil Armstrong Blvd, Eagan, MN 55121.
4. Preview for December 17th Working Session:
 - Updates on Group One and/or Two Topics as needed
 - Continued work on remaining Group Two Topics

Remaining 2014 Advisory meeting dates:

- Dec 17

Meeting Adjourned

The meeting was adjourned at 3:00pm.